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## **Legal Foundations for a New EU Industrial Policy**

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# Legal Foundations for a New EU Industrial Policy

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## Executive Summary

The legal framework of industrial policy under the EU Treaties is disunited. The EU's competence in the industrial field is of a mere supportive, complementary nature and several primary law principles fundamentally inhibit the pursuit of activist industrial policies in Europe. However, this weak competence is supplemented by a number of resources and legal bases which formally belong to distinct, neighbouring policy fields (such as state aid and competition policy, the EU budget, cohesion policy or economic governance), but can be mobilized to support supranational initiatives and bring about an autonomous EU industrial policy. In our view, this fragmented legal framework creates issues of consistency and coordination, which undermine the overall efficiency and legitimacy of EU industrial policy. Furthermore, in the absence of dedicated EU competence, mobilised second-order policies only partially fulfill their aim and do not allow for the pursuit of an integrated EU industrial policy agenda. On the basis of the analysis undertaken in this working paper we present four main recommendations to strengthen the legal premises of a supranational EU industrial policy, combining policy-related and funding-related aspects. In the framework of a revision of the Treaties we advance two different suggestions. First, we propose to **create a truly shared competence for industry**: industrial policy would be moved from Art. 6 to Art. 4(2) TFEU and Art. 173 TFEU would be amended to allow for the adoption of harmonising measures. The principle of pre-emption would regulate the relationship between the EU and the national level. There would be less of a need to resort to second-order legal bases. Second, we suggest **adjusting the current principles which constrain the development of new budgetary instruments**: the development of *ad hoc*, debt-based fiscal capacities and the emergence of a permanent EU fiscal capacity would require an amendment of the principle of budgetary balance, enshrined in Article 310(1) TFEU. Within the current legal framework, we propose: to **leverage a reformed cohesion policy to conduct an EU-led and place-based industrial policy** (under a cohesion policy legal basis EU legislation could regulate the rules and criteria for the allocation of funding, while the choice of projects to be financed would be identified at the local level, similar to cohesion funds and to NGEU); and to **exploit the full potential of supranational funding through the EU budget** (existing financial flexibilities under the current MFF could be placed at the service of the Union's industrial strategy). Such an increase of the EU budget could occur via extended national contributions or the creation of new own resources.

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## 1. Introduction

Despite the relative openness and flexibility of the original Treaties as to the type of economic policies the Member States and the EU can pursue, the subsequent evolution of EU law has consecrated a political-economic model under which space for activist industrial policies has become quite restricted. Four constraining factors can be identified. First, from the 1980s onwards, the EU has developed a fairly rigid state aid control regime limiting vertical interventions of Member States in their economies. Second, the competition principle has progressively gained an overarching status in the EU, which has, among others, materialized in the liberalization of public monopolies and stringent merger control, preventing the emergence of “European champions”. Third, free movement, which the EU has fully embraced both internally (with the internal market) and externally (with a liberal trade policy), has further constrained Member States’ ability to protect and support their industries and economies against foreign pressures. Last but not least, the architecture of the euro negotiated in Maastricht, and its focus on stability, its market orientation and its rules-based nature, have further constrained the space for proactive industrial policies in Europe, not only by limiting the Union’s economic and budgetary powers under the EMU, but also by subjecting national public finances to stringent rules. In a nutshell, the neoliberal turn in Europe, the rise of the Regulatory State, combined with the political difficulties and sovereignty concerns associated with further fiscal integration and redistribution in the Union, have produced a rather hostile political and legal landscape for market activism and integrated industrial policy in Europe.

Originally, the Treaty establishing the European Economic Community did not contain any provisions explicitly devoted to industrial policy. Starting from the 1970s, however, international competition and the challenges of globalisation prompted a more interventionist attitude. With the revision of the Treaty of Maastricht a competence for industrial policy was created (currently Art. 6(b) TFEU) and a corresponding article inserted in the Treaties (currently Art. 173 TFEU). Art. 6(b) and Art. 173 TFEU however assign a so-called “weak competence” to the EU in the field of industry, whereby the Union can only “carry out actions to support, coordinate or supplement the actions of the Member States” and any harmonisation of Member States’ laws or regulations is ruled out. Art. 173 TFEU provides a list of industry-related actions that both the Union and the Member States shall aim at, including: adjustment to structural changes; fostering a favourable environment for the development of and cooperation between undertakings, especially SMEs; fostering innovation, research and technological development. In these sectors the Union can adopt legislation through the ordinary legislative procedure, but those acts cannot entail harmonising measures nor lead to a distortion of competition” (173(3) TFEU). Although the use of Art. 173 TFEU as a legal basis for legislation is rather limited, it has in the

past allowed for the adoption of acts in the field of cultural industry and information society<sup>3</sup> and in support of SMEs.<sup>4</sup>

In addition, Art. 173.3 TFEU also establishes that “the Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of the Treaties”. It foresees a broader action for the Union under other related competences whereby harmonising measures can be adopted. Thus, to a weak “official” competence in industrial policy the Treaties flank a number of second-order harder competences that allow Member States to regulate some aspects of it. Some of these provisions can be seen as constraining the space for EU and national industrial policy. Competition policy, state aid and trade policy aim to stimulate a market-based development of EU industries while inhibiting active intervention by public authorities. EU economic policy also tends to curtail the choices of Member States in the field of industrial policy through budgetary constraints. Other Treaty provisions on cohesion, research, development and innovation policies, conversely, provide for active support to industrial development, acting on the framework conditions that could stimulate it. Most recently, interest for such industry-supporting legal bases has intensified, spurred by several internal and external factors, such as the eurozone crisis, the transition towards an environmentally sustainable economy, aggressive competition from external trade partners and, last but not least, the pandemic and the war in Ukraine.

The next sections of this working paper analyse these second-order legal provisions and resources that can be leveraged to bring about EU-wide industrial initiatives.

## **2. Beyond Article 173 TFEU: Second-order legal resources for EU industrial policy**

This section examines second-order legal bases, i.e. Treaty provisions which, although not directly devoted to industrial policy, can be mobilized to bring about industrial initiatives in the EU. In turn, we examine (i) internal market provisions, (ii) state aid policy and the EU budget, and (iii) economic and cohesion policy.

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<sup>3</sup> Decision No 1041/2009/EC of the European Parliament and of the Council of 21 October 2009 establishing an audiovisual cooperation programme with professionals from third countries (MEDIA Mundus).

<sup>4</sup> Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013).

*Table 2.1: Second-order legal bases for industrial policy*

Constraining legal bases		Enabling legal bases	
Art. 107 TFEU	A rigid state aid control regime	Art 114 TFEU	Harmonising measures under the internal market
Art. 101-103 TFEU	The competition paradigm	Article 107(3)(b) TFEU	The EU budget and state aid exemptions
Art 26 TFEU and ff	Free movement under the internal market	Art 121 TFEU	Economic policy & the European Semester
Art. 119 TFEU and ff; Art. 310(1) TFEU	EMU and the Maastricht consensus	Art 174-175 TFEU	Cohesion policy
Art 207 TFEU	Trade policy	Art. 179 TFEU and ff.	R&D and innovation policies

## 2.1 Internal Market

As noted, Art. 173 TFEU excludes the harmonisation of national legislation as well as any action that could jeopardise the internal market. Yet, the internal market has historically also provided the legal framework to adopt measures that indirectly or directly affect industrial policy and increase the competitiveness of European industries in specific sectors. The objective to promote and protect the EU internal market has recently become a leverage for strengthening the EU's industrial policy, especially in the wake of 'structural changes', such as climate and technological transitions and increasing unfair international competition. In the framework of the European Green Deal, Art. 114 TFEU - the internal market provision that allows for the adoption of harmonisation measures - provides the legal basis for the Commission proposal for the European Net Zero Industry Act.<sup>5</sup> Similarly, pressures coming from a challenging geopolitical and international trade environment have led to further industrial policy initiatives at the EU level. The notion of "open strategic autonomy" has redirected EU trade policy towards the need to ensure the resilience of the internal market by alleviating trade dependencies. In this context, the European Commission has identified 'sensitive ecosystems' (such as health, aerospace and defence, electronics, renewables, digital, or energy-intensive sectors) requiring the development of internal capacity, and brought forward legislative initiatives based on Article 114 TFEU, such as the European Chips Act, providing for harmonising measures for the semiconductor ecosystem, or its proposal for a Regulation on Critical Raw Materials.<sup>6</sup>

<sup>5</sup> Proposal for a Regulation of the European Parliament and the Council on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (Net Zero Industry Act), COM/2023/161 final.

<sup>6</sup> Regulation (EU) 2023/1781 of the European Parliament and of the Council of 13 September 2023 establishing a framework of measures for strengthening Europe's semiconductor ecosystem and amending Regulation (EU) 2021/694 (Chips Act);

Increasing recourse to internal market provisions to adopt industry-related legislation marks an interesting shift compared to the precedent market-oriented and neoliberal approach. Provisions that were typically used to foster market-enhancing and negative integration are increasingly repurposed as market-correcting measures. The necessity to reconfigure the balance between free market competition and support for EU industries emerges clearly as one of the priorities for the future, and stands for instance at the core of Enrico Letta's recent report on the future of the Single Market (Letta 2024).

## 2.2 State aid & the EU budget

Beyond regulation, funding can be another crucial channel to shape and support industrial strategies. Financial space to fund industrial policy in Europe has historically been quite restricted, a result of rigid state aid and fiscal policy rules inhibiting national support, combined with a limited and constrained EU budget. Over the past few years, the EU has however been quite active in developing new ways to pay for its industrial policy both at the national and supranational level.

When it comes to the national level, we are witnessing a structural reorientation of EU state aid control towards a general relaxation of the rules to support national investment and aid in favour of strategic industrial sectors. Most notably, the Commission has adopted its Temporary Crisis and Transition Framework.<sup>7</sup> As a major component of the Union's Green Deal Industrial Plan for the Net-Zero Age,<sup>8</sup> the framework, which is valid until the end of 2025, seeks to simplify and accelerate the granting of targeted aid for renewable energy deployment, decarbonizing industrial processes and the production of strategic net-zero technologies. As a direct response to the American IRA, it also opens the possibility for Member States to match aid and subsidies offered by third countries. Along similar lines, the Commission has also sought to ease and incentivize the provision of aid to so-called 'important projects of common European interest' (IPCEI) under Article 107(3)(b) TFEU - a provision present in the Treaties since the establishment of the European Economic Community in Rome in 1957 but barely used afterwards.<sup>9</sup>

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Proposal for a Regulation of the European Parliament and the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020, COM/2023/160 final.

<sup>7</sup> Consolidated text: Communication from the Commission Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02023XC0317\(01\)-20231121](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02023XC0317(01)-20231121)). The Framework prolongs and amends the Temporary Crisis Framework adopted in the aftermath of Russia's war on Ukraine to enable Member States to support their economy (available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC1109\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC1109(01)&from=EN)).

<sup>8</sup> Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions "A Green Deal Industrial Plan for the Net-Zero Age", COM(2023) 62 final (available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0062>).

<sup>9</sup> See Communication from the Commission, Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (2021/C 528/02) (available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021C0528\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021C0528(02)&from=EN)).

EU industrial policy cannot and must not solely rely on national financial support. Considering that national budgetary spaces for state aid and fiscal support diverge greatly,<sup>10</sup> such a situation could jeopardize the equity and integrity of the Single Market, hurt smaller and poorer Member States, and put Member States against one another in an unintended subsidies race. There is thus a principled need to complement national resources with new supranational capacities through the Union's budget to compensate for national disparities.

Yet, the EU budget has historically been a limited and constrained policy tool. While its initial supportive role to European industries should not be overlooked, it has long lacked both the critical mass and the reactivity to bring an ambitious and self-standing EU industrial policy to life. Important initiatives have however been undertaken over the past few years, substantially boosting the Union's financial firepower and endowing it with the means to fund and develop autonomous industrial initiatives. First, the EU has sought to free new budgetary margins within its ordinary budget by expanding programmes devoted to industrial policy (such as Horizon Europe, the Innovation Fund or InvestEU) and by ensuring better coordination and agility (most notably through the STEP platform). More decisively, the post-pandemic recovery plan, NextGenerationEU, has transformed EU public finances and opened new possibilities. Its main operational channel, the Recovery and Resilience Facility (RRF) and the model it embodies, i.e. an *ad hoc*, debt-based fiscal capacity dedicated to the implementation of EU policies (such as industrial policy), now forms an integral part of the Union's toolkit and could be mobilized again, in other contexts and for other purposes. This is, in a way, already happening. With RePowerEU, the EU has repurposed portions of NGEU monies to support reforms and investments in favour of energy security, autonomy and efficiency. Pending proposals offer to replicate the NGEU model and enable new supranational borrowings supporting EU action in various policy areas, including industrial policy. The aborted project of a Sovereignty Fund, put forward by Commissioner Breton in September 2022 to boost investment in strategic sectors, is one example.<sup>11</sup> Along similar lines, Von der Leyen's political guidelines for the next Commission propose the creation of a (still rather vague) European Competitiveness Fund, which would support investments in strategic technologies.<sup>12</sup>

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[lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1230\(02\)](https://lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1230(02)). For an updated list of approved IPCEI, see the official website: [https://competition-policy.ec.europa.eu/state-aid/ipcei\\_en](https://competition-policy.ec.europa.eu/state-aid/ipcei_en).

<sup>10</sup> See European Commission, State Aid Scoreboard 2023 (available at: [https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015\\_en?filename=state\\_aid\\_scoreboard\\_note\\_2023.pdf](https://competition-policy.ec.europa.eu/document/download/0b2037c5-c43f-4917-b654-f48f74444015_en?filename=state_aid_scoreboard_note_2023.pdf)).

<sup>11</sup> See Commissioner Thierry Breton, "A European Sovereignty Fund for an Industry 'Made in Europe'", Statement, 15 September 2022, available at: [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_22\\_5543](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_5543).

<sup>12</sup> See Ursula Von der Leyen, 'Europe's choice – political guidelines for the next European Commission 2024-2029', 18 July 2024, p. 12, available at: [https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648\\_en?filename=Political%20Guidelines%202024-2029\\_EN.pdf](https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf)

### 2.3 Economic policy & cohesion

Contemporaneously, and as a direct consequence of the COVID-19 pandemic and the adoption of NGEU, EU economic policy and cohesion policy are undergoing profound mutations. Their reach has widened to encompass industrial issues. They are thus increasingly central legal resources for stronger EU action in the industrial field.

While the EU's competence in economic policy remains one to coordinate (Articles 5 and 121 TFEU), the establishment of the European Semester after the Eurocrisis, combined with a consolidated Stability and Growth Pact, have greatly strengthened EU economic governance, expanded its material scope, and turned it into an increasingly effective system for controlling and co-directing national fiscal and economic choices. As a result, the EU economic governance framework both supports and constrains the enactment of industrial policy at the level of the Member States. It constrains it because it limits the Member States' leeway in fiscal policies through their adherence to the Growth and Stability Pact and through the Macroeconomic Imbalanced Procedure. By the same token, the coordination and monitoring within the Semester is a leverage for reforms that can boost industrial competitiveness and increase the convergence of the Member States' economic performance.

Economic convergence has also been the key driver for the development of the EU's cohesion policy, aiming at reducing disparities between the economic conditions of the European regions. The advantage of cohesion policy is that it combines EU-driven financing with a bottom-up approach to industrial development that builds upon local needs. Furthermore, its broad thematic reach ('economic, social and territorial cohesion', following Article 174(1) TFEU), lends itself to mobilising funding strategically and flexibly, also in support of the Union's industrial priorities. Recently, we have been witnessing a renewed interest in the potential of cohesion policy to act as a driver of industrial development. Since the 2014-2020 cycle EU Cohesion Policy has integrated industrial policy concerns requiring the adoption of Smart Specialisation Strategies (S3) as ex-ante conditionality requirements for the disbursement of funds. During the pandemic, cohesion policy provided the main tool for allocating NGEU funding. The RRF, the new budgetary programme dedicated to the implementation of NGEU and the disbursement of its funds, was adopted on the basis of Article 175(3) TFEU. Although the RRF has conveyed funding to investments and reforms in broad priority areas, these priorities include some key factors of innovative industrial policy, such as green and digital transition, productivity, competitiveness, research, development and innovation. Given the unprecedented amount of funding available under NGEU, it can be considered a substantive contribution to the inception of an EU-driven industrial policy, which could be reproduced in the future, either under the next MFF 2028-2034, in the context of a reorientation of cohesion policy, or under other *ad hoc* fiscal capacities. In fact, cohesion policy is currently undergoing a revamping process that is heading in the direction of a more holistic approach to cohesion as a



driver of economic growth in the EU as a whole.<sup>13</sup> In other words, from a purely “regional” perspective, cohesion policy is increasingly becoming an “economic” policy, which, in addition to targeting vulnerable regions and regional convergence, is actually aiming at higher levels of economic and social development across the EU.

### 3. Assessment

The status of industrial policy under the EU Treaties is inherently ambivalent. On the one hand, primary law comprises a number of principles and regimes which fundamentally inhibit the pursuit of activist industrial policies in Europe. Moreover, if the Treaties confer prerogatives to the EU in the industrial field, this competence is of a mere supportive, complementary nature. On the other hand, this weak competence is supplemented by a number of resources and legal bases which formally belong to distinct, neighbouring policy fields (such as state aid and competition policy, the EU budget, cohesion policy or economic governance), but which can be mobilized (and increasingly are) to support supranational initiatives and bring about an autonomous EU industrial policy. It is thus a disunited legal configuration, which offers genuine opportunities for action, but also fails to provide a clear and fully consistent allocation of responsibilities.

In our view, such fragmentation entails a number of risks and challenges. Most notably, it creates issues of consistency and coordination, which undermine the overall efficiency of EU industrial policy. Such inconsistency is first and foremost institutional. The various abovementioned legal bases rely on different institutional and procedural arrangements, which are not aligned. State aid policy and competition policy are to a very large extent solely in the hands of the European Commission, whereas the mobilisation of the internal market, cohesion policy or the EU budget for industrial purposes requires legislative procedures that involve the whole EU institutional apparatus. In such a constellation, interests, policy preferences and veto structures will not always be aligned, and this may undermine the overall consistency of policy action. For example, six small Member States led by Sweden recently called to end the Temporary Crisis and Transition Framework, which in their view risks fragmenting the Single Market, and to return to stricter state aid control.<sup>14</sup>

Fundamentally, the Treaties reflect an ideology which has been dominant for several decades but which has also been shifting following some recent developments (pandemic, war in Ukraine, international trade). The challenges affecting the EU industrial policy are thus partly

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<sup>13</sup> For more information, see the European Commission’s official website:

[https://ec.europa.eu/regional\\_policy/policy/how/future-cohesion-policy\\_en](https://ec.europa.eu/regional_policy/policy/how/future-cohesion-policy_en)

<sup>14</sup> See “Smaller EU countries revolt against state aid spree”, Euractiv, 8 March 2024, available at:

<https://www.euractiv.com/section/economy-jobs/news/smaller-eu-countries-revolt-against-state-aid-spre/>

political and partly legal. Politically, the choice in favour of a supranational EU industrial policy (or of a more interventionist national industrial policy) is not fully accomplished. We are still in the middle of an ideological evolution that revisits the key principles of free competition and of the internal market in the light of new imperatives. Legally, the Treaties provide a framework which is both flexible and rigid. It offers several options to achieve industrial policy objectives, yet it lacks a legal substratus that endows the Union with the tasks and competences – and therefore also the legitimacy – to implement a truly supranational EU industrial policy. Furthermore, the complexity of the Treaty revision process, which requires agreement by all Member States, acts as an obstacle to rethinking the very legal premises of an EU industrial competence. In the absence of dedicated legal bases and faced with the rigid Treaty revision framework, EU institutions do with what they have and are forced to resort to second-order legal bases to implement a supranational industrial policy.

Under the current EU legal framework, EU and national industrial policies are increasingly implemented through the backdoor and by other means. On the one hand, this is a necessary consequence of the transversal nature of industrial policy. Indeed, such industrial policy ‘by stealth’ is even foreseen by Art. 173.3, which allows the Union to adopt industry-related acts under different legal bases. Yet, the EU’s fragmented legal landscape aggravates this issue because industry-related measures are adopted on the basis of legal instruments that are not always appropriate or that have to be considerably tweaked to fit the purpose. Second-order policies thus mobilised only partially fulfill their aim and do not allow for the pursuit of an integrated EU industrial policy agenda. If pushed too far, such a practice risks undermining the principle of conferral, which governs competence allocation in the EU, as the current Treaty’s allocation of powers explicitly excludes EU competence in the field and leaves the matter to the Member States (which are in turn bound by internal market and competition rules).

To sum up, although the Treaties offer a number of useful legal resources which can be mobilised to bring about industrial initiatives at EU level, the fairly constraining political-economic model described above still draws several red lines which inhibit the deployment of a fully-fledged EU industrial policy. The legal landscape remains highly fragmented and characterized by an asynchronic relationship between the political ambition to enact a supranational EU industrial policy and the legal constraints under which such a policy must necessarily operate. With the new legislature beginning soon, it remains to be seen what shape such political ambition will take; for instance, the role that an industrial portfolio could have in the new Commission.<sup>15</sup>

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<sup>15</sup> Industrial issues enjoy a central position under von der Leyen’s political guidelines for her next mandate. Her plan for Europe’s sustainable prosperity and competitiveness includes a number of industrial initiatives, such as the abovementioned European Competitiveness Fund, or her proposal for a Clean Industrial Deal. The industrial channel will also be key for the Defence Union project.

## 4. Conclusions and Policy Recommendations

On the basis of the analysis developed in this working paper we present two sets of recommendations. The first are proposals *de lege ferenda*, which would require a revision of the Treaties. Yet, as we are aware of the difficulties related to Treaty changes, we also present some recommendations on how to enhance the effectiveness and coherence of an EU supranational industrial policy within the current Treaty framework (*de lege lata*). In both cases we couple policy-related recommendations that aim at strengthening the overall governance of an EU industrial policy with funding-related recommendations, with the objective of providing the Union with the tools to enact effective interventions in the field.

In the framework of a revision of the Treaties we propose:

- **To create truly shared competence for industry that would allow for the codification of the *de facto* competence that the EU has already developed in the field.**

Under the proposed Treaty reform, industrial policy would be inserted under Art. 4(2) TFEU on shared competences instead of Art. 6. Art. 173 TFEU would be amended to allow for the adoption of harmonising measures, provided that those measures do not violate the other Treaty provisions on the internal market, competition policy and state aid. Under shared EU competence for industrial policy,<sup>16</sup> the principle of pre-emption - according to which in the field of shared competences the national legislator cannot act if the EU has already adopted legal acts - would regulate the relationship between the EU and the national level and establish a clearer hierarchy. Furthermore, such competence would provide a legal basis to adopt acts in the field of industry through the ordinary legislative procedure, avoiding the phenomenon of circumventing the Treaties through reliance on second-order legal bases. Other legal bases would of course continue to be used when needed, depending on the matter to be regulated. Furthermore, state aid rules would also continue to apply and to prevent the distortion of the internal market. Dedicated shared competence for industrial policy would finally enhance the legitimacy of EU intervention and limit the institutional fragmentation that today affects EU action in the industrial field.

- **To adjust and modify the current principles which limit and constrain the development of new budgetary instruments.**

NGEU has shown that the EU Treaties offer a way for the development of *ad hoc*, debt-based fiscal capacities, which could be used again in the future to support the EU's industrial agenda. However, a number of constitutional constraints would complicate this process, and *de facto* prevent the emergence in the EU of a permanent,

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<sup>16</sup> These changes would need to be carried out via an ordinary revision procedure.

discretionary fiscal capacity that mature federations are normally endowed with. Most notably, the principle of budgetary balance, enshrined in Article 310(1) TFEU, prevents the EU from financing its budget through deficit and requires any major borrowing to be approved unanimously by the Member States through an amended own resources decision. Any major overhaul of the Union's budgetary powers would require abandoning these legal constraints (however difficult the endeavour might be politically).

Under the current legal framework and without the need for Treaty change, we propose:

- **To leverage a reformed cohesion policy to strengthen the governance of an EU-led and place-based industrial policy.**

In the framework of the current debate on the future of cohesion policy, several signs hint at a rethinking of the notion of cohesion as a broader “economic” policy tool targeting the competitiveness of the EU as a whole. Such understanding can provide the legal instruments to conduct a coherent supranational industrial policy, which however keeps its roots at the local level and maintains a bottom-up approach that is essential for identifying and responding to the needs on the ground. For its multi-level nature, cohesion policy can indeed combine a supranational approach to industrial policy with strong national and local ownership. Recourse to cohesion policy as a frame for industrial policy would not require any major legal adjustment, as measures could be adopted through the ordinary legislative procedure and implemented similarly to cohesion funds (and the RRF under NGEU). EU legislation could regulate the rules and criteria for the allocation of funding, while the choice of projects to be financed would be identified at the local level and agreed with the European Commission. At the EU level, the ordinary legislative procedure allows for swift supranational decision-making, which also involves the European Parliament, thus enhancing its democratic legitimacy. The bottom-up approach to the identification of projects and the allocation of financing embeds such a policy at the local level, ensuring respect for subsidiarity and protecting the competencies of the Member States in the field. In so doing, cohesion policy could enhance the institutional coherence of an EU industrial policy and avoid the multiplication of strategies and initiatives that currently characterise it. However, the reconversion of cohesion policy into industrial policy risks affecting the very objectives of cohesion policy as a policy of regional development aiming at supporting economically weaker regions, which typically lack a strong industrial basis.

- **To exploit the full potential of supranational funding through the EU budget.**

This working paper has insisted on the need to complement national funding with supranational financial capacities in order to preserve the Single Market and the level

playing field it establishes. Beyond the mobilisation of the NGEU template evoked above, this could be achieved by placing existing financial flexibilities under the current MFF at the service of the Union's industrial strategy, and by ensuring that the latter is endowed with sufficient means under the next 2028-2034 MFF. Such an increase of the EU budget could occur via extended national contributions or the creation of new own resources. In that context, the experience of the IPCEI could provide a useful model, to be finetuned and adapted in order to upgrade the European approach to industrial policy through joint investment projects combining EU and national funding. In that regard, the new rules of the SGP exclude national expenditure on co-financing of EU programmes from expenditure calculation,<sup>17</sup> and could be relied upon by the EU to promote a more harmonized investment strategy. In parallel, as proposed by the Letta report, efforts to phase out the relaxation of State aid rules, which increasingly distort competition and amplify distortions of the level playing field within the Single Market, and a return to stricter state aid enforcement at the national level should be undertaken.

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<sup>17</sup> See most notably, Article 2(2) of Regulation 2024/1263.

## References

Commissioner Breton, T., "A European Sovereignty Fund for an Industry 'Made in Europe'", Statement, 15 September 2022, available at:

[https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_22\\_5543](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_5543)

Letta, E., *Much more than a market, Speed, Security, Solidarity: Empowering the Single Market to deliver a sustainable future and prosperity for all EU citizens*, April 2024, available at:

<https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>

Packroff, J., "Smaller EU countries revolt against state aid spree", Euractiv, 8 March 2024, available at:

<https://www.euractiv.com/section/economy-jobs/news/smaller-eu-countries-revolt-against-state-aid-spreed/>

Von der Leyen, U., "Europe's choice – political guidelines for the next European Commission 2024-2029", 18 July 2024, p. 12, available at:

[https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648\\_en?filename=Political%20Guidelines%202024-2029\\_EN.pdf](https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf)